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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 366

THE UNITED STATES OF AMERICA,

Petitioner,

v.

JASPER WHITE,

On Writ of Certiorari to the United States Circuit Court of Appeals, for the Third Circuit.

BRIEF FOR JASPER WHITE

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February, 1944.

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Opinion Below

The opinion of the Circuit Court of Appeals is reported at 137 F. (2d) 24.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on May 24, 1943 (R. 26) and petition for rehearing was denied on June 18, 1943. The petition for a writ of certiorari was filed on September 18, 1943, and was granted on November 8, 1943. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented

Whether a member of a labor union, who is in possession of union records, demanded for production before a grand jury pursuant to a subpoena duces tecum addressed to the union, may refuse to produce those records on the ground that their production may tend to incriminate him.

Constitutional Provisions Involved

The Fourth Amendment to the Constitution provides in part:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *."

The Fifth Amendment provides in part:

> "No person * * * shall be compelled in any criminal case to be a witness against himself * * *."

Statement

The District Court of the United States for the Middle District of Pennsylvania, on December 28, 1942, issued its subpoena duces tecum directed to "Local No. 542, International Union of Operating Engineers", requiring the union to produce before the grand jury on January 11, 1943, copies of the constitution and by-laws of the union, and specifically enumerated union records showing its collections of work-permit fees, including the amounts paid therefor, and the identity of the payors, from January 1, 1942, to the date of the issuance of the subpoena (R. 4, 5). The subpoena was issued during the course of a grand jury investigation into alleged irregularities in connection with the construction of the Mechanicsburg Naval Supply Depot (R. 20). It was directed to the union and served on the union's president (R. 5).

On January 11, 1943, respondent, Jasper White, appeared before the grand jury, acknowledged that he had the demanded documents in his possession, but, describing himself as "assistant supervisor" of the union, declined to produce them, "upon the ground that they might tend to incriminate Local Union 542, International Union of Operating Engineers, myself as an officer thereof, or individually" (R. 2, 3). He reiterated his refusal to produce the records after consultation with counsel, even though asked by the prosecutor whether his position would be the same if he were assured that "the Union itself will not be a defendant * * *" (R. 3). On January 13, 1943, he was cited for contempt of court, and during the hearing reiterated his refusal to produce the records (R. 11). Respondent had the records with him and was prepared to tender them for inspection by the district judge in support of his assertion that their contents would tend to incriminate him or the union. He based his refusal to produce them on an opinion of his counsel that his claim of privilege was justified by the fact "that great uncertainty exists today as to what may or may not constitute a violation of Section 276 (b), Title 40, of the United States Code" (R. 2, 3).[1]

The district judge took the view that a member of a union in possession of its records could not lawfully refuse to produce them upon the ground of personal self-incrimination. This conclusion was predicated upon the assumption that the union was a separate entity which did not have the privilege in its own right. The district judge

[1] This is the so-called "Anti-Kickback Act" (Act of June 13, 1934, c. 482, 48 Stat. 948, 40 U. S. C. 276(b). Section 1 of this Act, which was the subject of construction in United States v. Laudani, Oct. Term, 1943, No. 71, decided Jan. 3, 1944, provides:

That whoever shall induce any person employed in the construction, prosecution or completion of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, or in the repair thereof to give up any part of the compensation to which he is entitled under his contract of employment, by force, intimidation, threat of procuring dismissal from such employment, or by any other manner whatsoever, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

reasoned therefrom that respondent could not claim immunity because the records of a third person would incriminate him (R. 8-10). The district court adjudged respondent guilty of a contempt of court and sentenced him to thirty days' imprisonment (R. 11, 12). Immediately after sentence the respondent was released pending appeal on his personal bond in the amount of One hundred dollars (R. 14).

The court below was divided in its reversal of the judgment of conviction. The majority held that the records of an unincorporated labor union were the property of all its members, and that, therefore, if respondent were a union member, and if the books and records would have tended to incriminate him, he properly could refuse to produce them before the grand jury (R. 22). The majority rejected the analogy which the Government attempted to draw between corporations and unincorporated labor unions. They emphasized the existence of the corporation as a creature of the state, enjoying privileges and franchises subject to the laws of the state and the limitations of its charter. As opposed to the implicit duty of corporations to keep books and records of their transactions for inspection by the state when so demanded, the majority pointed out the private nature of union documents and the right of the members to refrain from keeping any records in the absence of legislation to the contrary. For the purpose of the privilege against self-incrimination, they held that the members of a union are in the same position as ordinary individuals who maintain books and records of their transactions (R. 22).

Accordingly, the court below remanded the case to the district court with directions to sustain the claim of privilege if after further inquiry it should determine that respondent was in fact a member of the union and that the books would tend to incriminate him as an individual (R. 22-23). The dissenting judge took the position that a labor

union, even if unincorporated, is an organizational entity functioning as such independently of its individual members, that consequently its records are not the property of its individual members, and that, since the privilege against self-incrimination cannot be asserted in respect of the books and papers of a third person, the refusal to produce them before the grand jury was not authorized by the Fifth Amendment (R. 25).

Summary of Argument

The court below held that respondent, if a member of an unincorporated trade union, could refuse to produce union records in his possession in response to a subpoena directed to the union on the ground that their production might tend to incriminate him as an individual. In so holding, the court correctly held that the reasoning of this Court in such cases as *Hale* v. *Henkel*, 201 U. S. 43, and *Wilson* v. *United States*, 221 U. S. 361, which denied the privilege with respect to corporate books, did not apply to the books of unincorporated labor unions. Those decisions are predicated upon the visitorial power of government over artificial entities of its own creation.

Even if a union were conceded to act as a juridical entity for procedural purposes, that fact alone would not bring the union and its members within the scope of the decisions in *Hale* v. *Henkel*, *supra*, and *Wilson* v. *United States*, *supra*. It is not mere existence as an entity, but rather existence as an entity in the corporate form, with special franchises and privileges granted by the sovereign, that makes an organization subject to the rule in those cases.

Unions are not as a matter of fact entities apart from their members. Mere ability to sue or be sued in a common name, either because of an enabling statute of some state or because of the federal rule established in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, does not

change the unincorporated association from a collection of individuals to an entity existing separate and apart from the members composing it. The rights and liabilities of members of an unincorporated association differ from those of stockholders in a corporation. Suits may be brought against all the members of an unincorporated association by a suit against them in their common name. If judgment against the association is unsatisfied, resort may be had to a suit against any of the individual members of the association for the full amount. This unlimited personal liability is in marked contrast to the liability of a corporate stockholder. Members of an unincorporated association are common or joint owners of its personal property. In many jurisdictions, unincorporated associations are incapable of taking title to real property. In those jurisdictions where an association can take title to real property, the title is held to actually vest in all the individual members.

The many statutes affecting unincorporated trade unions which have been recently enacted do not change the fundamental nature of such unions from an aggregate of individuals to an entity. The validity of such statutes is not impaired by retention of the long prevalent theory of the unincorporated association as lacking entity apart from its members. Labor unions should not be held to have undergone a change in their fundamental natures by statutes which were not enacted for such a purpose, but which rather seek only to control the manner in which an aggregate of persons use their collective power. The use of combined effort to protect constitutional rights does not necessitate incorporation.

The fact that an unincorporated association is not juridically considered a person is clear from an examination of many statutes in the United States Code. Associations are not "persons" within the definition found in the General Construction Law. Moreover, when it is desired to

bring them within the definition of "persons" subject to any statute, express statement of that purpose must be set forth in the statute. None of the statutes to which unincorporated associations are subject, requires a change in the fundamental conception of the unincorporated association as a mere aggregate of individuals.

An unincorporated association may not be indicted for a violation of 40 U. S. C. A. 276 (b). This statute is subject to possible construction making operation of a work-permit system by union officials and members unlawful. The grand jury which requested the books of the union from the respondent was solely concerned with an investigation of the work-permit system. Since an association was not a "person" within the meaning of 40 U. S. C. A. 276 (b), respondent could clearly refuse to produce the records of the union upon the ground that they might tend to incriminate him. In so far as a possible violation of that section was involved, the records of the union were clearly not those of a separate entity.

ARGUMENT

The court below correctly held that a member of an unincorporated labor union possesses a constitutional right to refuse to produce, in compliance with a subpoena duces tecum, records of the union which are in his custody and which might tend to incriminate him.

The privilege against self-incrimination is guaranteed by both the Fourth and Fifth Amendments to the Constitution. The Fifth Amendment explicitly guarantees that no person shall be compelled to be a witness against himself in a criminal proceeding. A grand jury investigation is a criminal proceeding within the definition of the fifth amendment. *Counselman* v. *Hitchcock*, 142 U. S. 547. The Fourth

Amendment protects against unlawful searches and seizures. Compulsory production of self-incriminating records violates not only this Amendment, but also the Fifth Amendment. *Boyd* v. *United States,* 116 U. S. 616.

The subpoena addressed to Local Union 542, International Union of Operating Engineers, called for the production of union records showing the collection of work-permit fees, including the amount paid therefor, and the persons to whom paid, from January 1, 1942, to the date of the issuance of the subpoena (R. 4, 5). Respondent informed both the grand jurors and the district court that his claim of privilege was predicated upon the fact "that great uncertainty exists today as to what may or may not constitute a violation of Section 276 (b), Title 40, of the United States Code[2] (R. 3, 11).

The Government contends that a union member may not assert the privilege against self-incrimination with respect to union records that incriminate him as an individual. The argument is advanced that the union is a separate entity from the members composing it. The Government contends that the reasoning of this Court in such cases as *Hale* v. *Henkel,* 201 U. S. 43, and *Wilson* v. *United States,* 221 U. S. 361, which deny the privilege with respect to corporate books to both the corporation and its officers, applies with equal force to unincorporated labor unions and their members. The Government also contends that respondent could not claim the privilege because the records were not his property within the rule of *Boyd* v. *United States,* 116 U. S. 616.

The respondent contends that the decisions in which this Court has denied the privilege to corporations and to corporate officers are not applicable to the case at bar. Respondent further contends that the test in the *Boyd* case, *supra,* was met by membership in the union.

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[2] See footnote 1, supra.

This Court, *in Hale* v. *Henkel, supra,* stated at length the reasons why a corporation cannot avail itself of the privilege against self-incrimination. A corporation is a creature of state legislation, enjoying privileges and franchises subject to the laws of the state and the limitations of its charter. The state, in the exercise of its sovereignty, may inquire how these franchises are employed, and whether they have been abused. It may demand the production of corporate books and records to accomplish that purpose. Since in *Hale* v. *Henkel, supra,* the right of the federal, rather than the state government, to subpoena the records of state corporations was at issue, the Court took occasion to point out the dual sovereignty to which state corporations are subject. While disclaiming a general visitorial power over them, the Court pointed out that in so far as their franchises bring them within matters of federal jurisdiction, they must exercise their powers in subordination to the authority of Congress to regulate such powers. The authority of the federal government to enforce its own laws is the same as if the corporation had been created by act of Congress (201 U. S., at 75).

This Court in *Wilson* v. *United States,* 221 U. S. 361, held that a corporate officer could not refuse to produce corporate books upon the ground that they might incriminate him as an individual. The reasoning of this decision was predicated upon the existence of the corporation as an entity separate and distinct from its officers. The books which were the subject of subpoena belonged to the corporation. They were not the property of its officers. A corporate officer could not claim the privilege because the books of another person, the corporation, would incriminate him.

The decisions in *Hale* v. *Henkel, supra,* and *Wilson* v. *United States, supra,* are not applicable in the present case. The books and records of an unincorporated trade union are vastly different from the books and records of a corporation. There is nothing, in the absence of legislation, giving the state or federal government power over an un-

incorporated trade union or its officers. The books and records of such organizations are the private property of the members.[3] Respondent was not engaged with his fellow union members in any business for profit. Because of the futility of individual action to obtain just rights and benefits in his field of employment, respondent united with his fellow workers to insure those rights and benefits by collective bargaining. The union is similar, in existence, to a religious organization or a political association. It is simply a group of individuals gathered together and assembled together for the more effective exercise of the constitutional rights which each individual American citizen has, and which he may lawfully exercise to improve his hours, wages, and other conditions of employment. To hold that by mere collective action respondent has forfeited the basic constitutional privilege against self-incrimination is to negative the fundamental concepts upon which trade unionism has been established.

Assuming, without conceding, that the members of a trade union by their joint activity create an organization which exists as an entity, it does not follow that such entity or its members are subject to the rules enunciated in *Hale* v. *Henkel, supra,* and *Wilson* v. *United States, supra.* This Court, in the *Wilson* case, in discussing when the privilege against self-incrimination may not properly be claimed, said:

> "The principle applies not only to public documents in public offices, but also to records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established. There the privilege, which exists as to private papers, cannot be maintained." (Wilson v. United States, 221 U. S. 361, 380.)

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[3] Dodd, "Dogma & Practice In the Law of Associations" (1929), 42 Harvard Law Review 977, 992; Wrightington, "The Law of Unincorporated Associations and Business Trusts" (1923), p. 351, footnote 61.

It is clear that it is not the mere existence of an entity that brings it within the rule of the *Wilson* case. Rather it is the existence of an entity doing business in the corporate form with franchises and privileges granted by the sovereign. (Cf. *Wilson* v. *United States*, 221 U. S. at 382, 383.) An unincorporated trade union would not be within the rule even if it were to be considered an entity. The members of the union remain, with respect to claiming the privilege against self-incrimination, in the same position as ordinary individuals who maintain books and records of their transactions. It is significant to note that compulsory incorporation of trade unions has been declared unconstitutional in that it violates the fourteenth amendment to the United States Constitution. (*American Federation of Labor* v. *Industrial Commissioner of Colorado*, 13 Lab. Rel. Rep. 105 [1943].)

The Government in its brief (pp. 13-21) argues that the enactment of many state and federal statutes respecting unincorporated trade unions is affirmative legal recognition of their existence as juristic personalities.[4]

In the early days of their existence, labor unions were treated as illegal conspiracies. See the case of the *Philadelphia Cordwainers, 3 Commons & Gilmore, Documentary History of American Industrial Society*, 59-248 (1910); *1 Teller, Labor Disputes and Collective Bargaining* (1940), Sec. 60, pages 150-152. Their legality was first recognized in *Commonwealth* v. *Hunt*, 4 Met. (Mass.) 111 (1842); *Frankfurter & Greene, The Labor Injunction* (1930); pages 4, 27. While labor unions are now universally considered lawful, they still cannot, in most jurisdictions, sue or be sued in their own name in the absence of an enabling statute.[5] *2 Teller, Labor Disputes and Collective Bargaining,*

[4] See appendix to Govt's brief, pp. 30-35; Dodd "Some State Legislatures Go To War—On Labor Unions" (1944), 29 Iowa Law Review 148.

[5] For compilation of cases, see Sturges "Unincorporated Associations as Parties to Actions", (1923), 33 Yale Law Journal 383, footnote 1; 38 Columbia Law Review, 454, 455 (1938); Witmer "Trade Union Liability; the Problem of the Unincorporated Corporation", 51 Yale Law Journal 40, 41, 42, footnote 9 (1941); Cole, "The Civil Suability at Law of Labor Unions" (1939), 8 Fordham Law Review, 29.

Sec. 462, pages 1362-1366. Almost all states now have such statutes.[6] Labor unions may be sued in the federal court in their common name even in the absence of an enabling statute. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344. The Government in its brief places great emphasis upon that decision (Govt's. brief, pp. 14, 15, 16, 22, 23, 24). An examination of the *Coronado* case fails to indicate that it introduced more of a change in the conception of trade union personality than was effected by the enabling statutes.[7] The suit was a representative one in which no liability was alleged on the part of the union apart from its members.[8] The Court well recognized that fact. While its holding that a union could be sued in its common name was of great importance, the Court stated that the decision was "—after all, in essence and principle, merely a procedural matter". 259 U. S. 344, 390. It is to be noted that the plaintiff's cause of action in the *Coronado* case was for triple damages under the Sherman Anti-trust Act. The Court expressly alluded to the fact that the Act provided for suit against associations (15 U. S. C. A. 7, 8), 259 U. S. at 392. It has been argued that the holding should be considered as based solely on the terms of the Act. *Warren, Corporate Advantages Without Incorporation* (1929) 648 ff. In any event, there is nothing in the decision to indicate an abandonment of the theory that an association is a mere aggregate of individuals. Rather is support for this theory found in the language of the Court (259 U. S., at 389):

> "To remand persons injured to a suit against each of the 400,000 members to recover damages and to levy on his share of the strike fund, would be to leave them remediless."

The language used by the court is subject to no other interpretation than that the strike fund of the union was

[6] For compilation of statutes, see 38 Columbia Law Review, 454, 456, footnote 15.

[7] 38 Columbia Law Review, 454, 456-459.

[8] 259 U. S. 344, 367 (Argument of Defs. in Error).

not the property of any separate entity but rather the joint property of all the members.

Discussing the *Coronado* case, in its opinion in *Ex Parte Edelstein*, 30 F. (2d) 636[9] (C. C. A. 2, 1929), the court stated at page 638:

> **"We do not, therefore, think that there is even an intimation that the Supreme Court meant to change the doctrine that such associations are aggregations, the political status of whose members is as little enlarged as though they were partners in an ordinary commercial or industrial enterprise."**

The doctrine of the *Coronado* case has been limited to federal causes of action.[10] It has not been followed by many states.[11] Even in its application no inference can be drawn that unions are entities in other than the capacity to appear in their common names as parties plaintiff or defendant. Several federal decisions, wherein unions are referred to as "entities", are explainable in terms of individual liability on an agency theory or of a liberalized procedural theory on service of process. Cf. *Christian* v. *International Association of Machinists*, 7 F. (2d) 481, 482 (E. D. Ky. 1925); *Dean v. International Longshoremen's Association*, 17 F. Supp. 748, 749 (W. D. La. 1936).

Actions brought against trade unions in their common name are, when analyzed, actions predicated upon the individual liability of all the members. The liability of the members is determined by the rules of agency law. If suit

[9] Certiorari denied Sub-Nom. Edelstein v. Goddard, 279 U. S. 851 (1929).

[10] Rule 17(b). The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held; except that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or Laws of the United States.

[11] 51 Yale Law Journal 40, 41, footnote 9.

is brought against any individual member, the plaintiff must establish his liability within those rules. If suit is brought against the association in its common name, the plaintiff to recover must establish that the cause of action is one upon which all the members would be liable.[12] *McCabe* v. *Goodfellow*, 133 N. Y. 89; *Schouten* v. *Alpine*, 215 N. Y. 225. The General Associations Law of New York well illustrates the unlimited personal liability of a union member. Section 13 provides for a class action against a statutorily named representative.[13] Section 15 provides that when in any such action a money judgment is obtained, it must be first satisfied out of any personal or real property belonging to the association, or owned jointly, or in common, by all the members thereof.[14] Section 16 then provides that upon return of an execution against the association, wholly or partially unsatisfied, an additional action may be brought against the individual members with recovery of the costs of the principal suit as part of the damages.[15] Statutes of this nature are clearly

[12] For collection of cases from various jurisdictions, see 38 Columbia Law Review, 454, 457, footnote 18.

[13] General Associations Law of the State of New York, Section 13: "An action or special proceeding may be maintained, against the president or treasurer of such an association, to recover any property, or upon any cause of action, for or upon which the plaintiff may maintain such an action or special proceeding, against all the associates, by reason of their interest or ownership, or claim of ownership therein, either jointly or in common, or their liability therefor, either jointly or severally. Any partnership, or other company of persons, which has a president or treasurer, is deemed an association within the meaning of this section.

[14] General Associations Law of the State of New York, Section 15: "In such an action the officer against whom it is brought cannot be arrested; and a judgment against him does not authorize an execution to be issued against his property, or his person; nor does the docketing thereof bind his real property, or chattels real. Where such a judgment is for a sum of money, an execution issued thereupon must require the sheriff to satisfy the same, out of any personal or real property belonging to the association, or owned, jointly or in common, by all the members thereof."

[15] General Associations Law of the State of New York, Section 16: "Where an action has been brought against an officer, or a counterclaim has been made, in an action brought by an officer, as described in this article, another action for the same cause, shall not be brought against the members of the association, or any of them, until after final judgment in the first action, and a return, wholly or partially unsatisfied or unexecuted, of an execution issued

(*Continued on following page*)

predicated upon the existence of the unincorporated association as a mere collection of individuals and not as a separate entity. The entity theory has not been adopted even to the extent that it is found in the Uniform Partnership Act, wherein the commissioners expressly attempted to conform to the aggregate or common law theory. 7 U. L. A. 1, pages 3, 4, 5.

It is true that in *Kirkman* v. *Westchester Newspapers, Inc.*, the New York Court of Appeals held that a labor union may sue for libel. 287 N. Y. 373, 39 N. E. (2d) 919 (1942). The Court based its decision upon the fact that such an action was maintainable within the provisions of Section 12 of the General Associations Law.[15] Speaking of the alleged libel, the Court stated:

"It does not reflect upon, or tend to injure the reputation of the individual members but it does tend

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thereupon. After such a return, the party in whose favor the execution was issued, may maintain an action, as follows:

1. Where he was the plaintiff or a defendant recovering upon a counterclaim, he may maintain an action against the members of the association, or, in a proper case, against any of them, as if the first action had not been brought, or the counterclaim had not been made, as the case requires; and he may recover therein, as part of his damages, the costs of the first action, or so much thereof, as the sum, collected by virtue of the execution, was insufficient to satisfy.

2. Where he was a defendant, and the case is not within subdivision 1st of this section, he may maintain an action, to recover the sum remaining uncollected, against the persons who composed the association, when the action against him was commenced, or the survivors of them.

But this section does not affect the right of the person, in whose favor the judgment in the first action was rendered, to enforce a bond or undertaking, given in the course of the proceedings therein. Section 11 of this chapter applies to an action brought, as prescribed in this section against the members of any association, which keeps a book for the entry of changes in the membership of the association, or the ownership of its property; and to each book so kept."

[15] General Associations Law of the State of New York, Section 12: "An action or special proceeding may be maintained, by the president or treasurer of an unincorporated association to recover any property, or upon any cause of action, for or upon which all the associates may maintain such an action or special proceeding, by reason of their interest or ownership therein either jointly or in common. An action may likewise be maintained by such president or treasurer to recover from one or more members of such association his or their proportionate share of any moneys lawfully expended by such association for the benefit of such associates, or to enforce any lawful claim of such association against such member or members."

> to discredit the work in which they have a common interest. The injury is thus a common injury and the members have a common interest in the consequent damages." 287 N. Y. 373, 379.

The Court in holding that an action for libel could be maintained under the New York statute did not adopt the entity theory of an unincorporated association. It specifically pointed out that as early as 1853, in *Taylor* v. *Church*, 8 N. Y. 452, the New York Court of Appeals held that partners could sue for libel and recover for injuries done to the character, credit and standing of their firm. 287 N. Y. 373, 380. Certainly partnerships are not entities in New York law. The decision in the *Kirkman* case is purely a determination based upon statutory construction.

Many instances may be given which support the aggregate theory of the unincorporated association. Unincorporated associations lack power to hold real property in their common name in most jurisdictions. Deeds to them are void because of uncertainty as to grantee. To circumvent this difficulty it is necessary to convey real property to trustees for the benefit of the association. *Wrightington, The Law of Unincorporated Associations and Business Trusts* (1923) pp. 336, ff. *Sturges, Unincorporated Association as Parties to Actions* (1923), 33 Yale Law Journal, 383, 391-393. Title to personal property is vested in the individual members of an unincorporated association. It has been held that an indictment for larceny from an association should be laid as a larceny from the property of the individual members and not the association. *Wallace* v. *People*, 63 Ill. 451. An automobile has been declared improperly registered because not registered in the name of all the members of the union. *Hanley* v. *American Ry. Exp. Co.*, 244 Mass. 284, 138 N. E. 323 (1923). In a recent case, distribution of beer by a union to its members was held not to be a sale or gift within the meaning of a statute requiring a license to sell

or distribute on the theory that the beer was the common property of all the individual members. *People* v. *Budzan*, 295 Mich. 547, 295 N. W. 259 (1940). Unincorporated trade unions are not citizens capable of suing or being sued in federal courts on the ground of diversity of citizenship. The citizenship of the individual members is determinative upon the question of federal jurisdiction. *Ex Parte Edelstein*, 30 F. (2d) 636 (C. C. A. 2, 1929); *Levering & Garrigues Co.* v. *Morrin*, 61 F. (2d) 115, 117, (C. C. A. 2, 1932), aff'd 289 U. S. 103 (1933); *International Allied Printing Trades Association* v. *Master Printers Union*, 34 F. Supp. 178 (D. N. J. 1940); *Rosendale* v. *Phillips*, 87 F. (2d) 454, C. C. A. 2, (1937); *Green* v. *Gravatt*, 34 F. Supp. 832 (W. D. Pa. 1940).

The Government, in support of its contention that a labor union has existence as an entity apart from its members, points out the liability of labor unions to criminal prosecution (Govt's. brief, p. 14). The cases cited, with one exception, involve the indictment of a union or other unincorporated association for violation of the Sherman Anti-trust Act.

Associations are defined as "persons" subject to the provisions of the Act. 15 U. S. C. A. 7, 8. It is clear that in the absence of legislative intent, an association does not commit crimes. 7 C. J. S. Associations, Sec. 17, page 43. An association is not within the definition of a "person" in the General Construction Law. 1 U. S. C. A. 1. When Congress desires to make unincorporated associations subject to the provisions of any statute it expressly defines them as "persons" within the meaning of the statute.[17]

[17] 2 U. S. C. A. 241 (f); 7 U. S. C. A. 2, 72, 92 (k) 116 (f) (1), 123, 151, 182, 499a (1), 504, 589 (1), 1561 (a) (2); 15 U. S. C. A. 12, 71, 142, 364, 431 (e); 18 U. S. C. A. 403; 19 U. S. C. A. 172, 1341 (e), 1401 (d); 21 U. S. C. A. 171 (d), 321 (e); 26 U. S. C. A. 3228 (a); 28 U. S. C. A. 390a; 29 U. S. C. A. 53, 113(c), 203(a); 38 U. S. C. A. 592(e); 43 U. S. C. A. 1171; 46 U. S. C. A. 316b, 801; 47 U. S. C. A. 30; 48 U. S. C. A. 471a (1); 48 U. S. C. A. 663(4); 49 U. S. C. A. 401 (27); 50 U. S. C. A. 82(a), with which compare 7 U. S. C. A. 62, 242, and 26 U. S. C. A. 145(c), 894 (b) (2) (D), 3797 (a) (1).

Such legislative action would clearly be unnecessary if unincorporated associations were "persons" in ordinary legal contemplation.

The Government, other than the Anti-trust cases, cites only one authority in support of its contention that labor unions are entities, because of their liability to criminal prosecution. The case relied on by the Government is *United States* v. *Local 807, et al.*, 315 U. S. 521 (Govt's. brief, p. 14). The union involved in that case had been indicted and convicted, along with individual members, for conspiracy to violate Sec. 2(a), 2(b) and 2(c) of the Anti-Racketeering Act of June 18, 1934,[18] and of conspiracy to violate Sec. 1 of the Sherman Anti-trust Act. The Circuit Court of Appeals reversed all the judgments of conviction, 118 F. (2d) 684. The concurring majority opinion reversed the judgment of conviction of Local Union 807 for a violation of the Anti-Racketeering Act on the ground that an unincorporated association was not a "person" capable of committing a crime in violation of its provisions. 118 F. (2d), 684, 688. The Government, on appeal to this Court, asked that the judgments of conviction for violation of the Anti-Racketeering Act be reinstated. It did not seek the review of the judgment of the Circuit Court of

[18] This is the so-called "Anti-Racketeering Act" (Act of June 18, 1934, c. 569, 48 Stat. 979, 18 U. S. C. 420 (a). The Act provides:

"Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate subsections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both."

Appeals reversing conviction of the union and of the individual defendants for violation of the Anti-trust Act. 315 U. S. 521, 524.

This Court, in affirming the judgment of the Circuit Court, held that the Anti-Racketeering Act did not apply to the activities of the defendants as disclosed by the record because of the provisions of Sec. 2(a), excepting from punishment "any person" who "obtains or attempts to obtain by the use of, or attempt to use, or threat to use, force, violence or coercion * * * the payment of wages by a bona-fide employer to a bona-fide employee." 315 U. S. 521, 531.

This Court did not pass upon the question as to whether or not the union was a "person" within the provisions of the Anti-Racketeering Act. The Government anticipated that argument by counsel for the union and contended in its brief that the union was a person subject to the Act. (Argument for Gov't., 315 U. S. 521, 524.) It cannot be implied that this Court must have necessarily considered the union as a "person" subject to the Anti-Racketeering Act in order to decide the case as it did. That such an implication is not warranted is clear from the dissenting opinion of Stone, C. J., wherein he states, 315 U. S. 531, 539:

> "I think the judgment should be reversed, and the convictions affirmed, subject only to an examination of the sufficiency of the evidence as to some of the respondents, and to a consideration of whether the union itself is a 'person' within the meaning of the statute."

No discussion involving the concept of the unincorporated association as a legal unit or juristic person would be complete without some reference to the argument that such a concept implies usurpation of legislative power. Only the legislature may create legal units. If the legisla-

ture has declined to do so, courts should not by judicial decision circumvent that intent.[19]

This Court has strongly indicated that a member of an unincorporated association may claim a privilege against self-incrimination and refuse to produce records of the association which tend to incriminate him. *Brown* v. *United States*, 276 U. S. 134 (1928). The *Brown* case involved an appeal from a judgment of conviction of contempt of court. Brown was the secretary of the National Alliance of Furniture Manufacturers. He was served with a subpoena duces tecum, addressed to the association, requiring the production of certain association records before a grand jury. Brown appeared before the grand jury and informed them that there was no such entity as the National Alliance of Furniture Manufacturers capable of appearing in response to the subpoena. Brown did not bring the association records with him. When presented to the District Court as a contumacious witness, Brown for the first time claimed that the production of the records would incriminate him as an individual and be violative of his rights under the Fourth and Fifth Amendments to the Constitution. The District Court overruled his claim to privilege and found him guilty of contempt. Brown thereupon appealed.

This Court, in holding that the subpoena was not a nullity emphasized that the investigation conducted by the grand jury was in connection with possible violations of the Anti-trust Act, to which associations were expressly subject. 276 U. S. 134, 141, 142. Discussing Brown's right to claim the privilege with respect to association records, this Court stated, 276 U. S. 134, 143-145:

> "Whether Brown's relation to the association or to the documents in question was such as to entitle him under any circumstances to assert the constitutional privilege, we do not find it necessary to inquire. All other matters aside, it is impossible for us to say, upon

[19] Warren "Corporate Advantages Without Incorporation" (1929), pp. 1-13.

the record before us, that the claim of such privilege was sustained. Upon Brown's appearance before the grand jury in response to the subpoena, he made no claim of the privilege, but insisted only that there was no such person or entity as the National Alliance capable of being served with a subpoena or of appearing in answer to one. This notwithstanding the fact that his attention was directed to the subject of self-incrimination. Upon his presentment to the District Court as a contumacious witness, he answered, among other things, that to compel him to produce the documents set forth in the subpoena would be to submit to an unlawful seizure and to produce evidence against himself. There was a hearing, but the record fails to disclose what was before the court for its consideration upon that hearing. It appears only that the court held that no sufficient excuse for Brown's conduct had been shown, and he was ordered to again appear before the grand jury and produce the documents called for, whether that body saw fit to administer an oath to him or not. Appearing before the grand jury, he again refused, except on condition that he should be subpoenaed and sworn. Thereupon, he was adjudged by the district court to be in contempt for his failure to comply with its order, and sentenced to imprisonment.

Whether the papers were produced for the inspection of the court does not appear; but it may well be that they were and that from an examination of them it appeared that the claim of privilege was wholly without merit. In any event, it was Brown's duty to produce the papers in order that the court might by an inspection of them satisfy itself whether they contained matters which might tend to incriminate. If he declined to do so, that alone, would constitute a failure to show reasonable ground for his refusal to comply with the requirements of the subpoena. Consolidated Rendering Co. v. Vermont, supra, pp. 552, 553 (207 U. S. 541). As very pertinently said by the Court of Appeals of Kentucky in Commonwealth v. Southern Express Co., 160 Ky. 1, 3: '* * * the individual citizen may not resolve himself into a court and himself determine and assert the criminating nature of the contents of books and papers required to be produced.' See also Ex Parte Irvine, 74 Fed. 954, 960; United

States v. Collins, 145 Fed. 709, 712; Mitchells Case, 12 Abb. Pr. 249, 260-261. And see generally, Blair v. U. S., 250 U. S. 273, 282.

From the foregoing we may properly assume in support of the judgment below that either from an inspection of the papers or from other facts appearing there was disclosed to the district court a want of substance in Brown's claim of privilege. Certainly there is nothing in the record, beyond Brown's mere assertion, that affirmatively shows or tends to show that the claim was well founded."

It should be noted that counsel for Brown clearly asserted the claim to privilege upon the ground that the records of the association would incriminate him as an individual. (Argument for Brown, 276 U. S. at 136.) The Government did not challenge Brown's position in this respect. Rather than denying the existence of the privilege, the Government took the position that Brown failed to justify his refusal to produce the documents by failing to show that he was a member of the association and that its members were not corporations. (Argument of Government, 276 U. S. at 137.)

The Circuit Court of Appeals for the First Circuit has recognized the right of an officer of an unincorporated association to claim the privilege against self-incrimination and to refuse to produce the books and records of the association upon that ground: *Corretjer* v. *Draughon*, 88 F. (2d) 116.

Corretjer was the secretary of a political party in Puerto Rico. A subpoena was served in the course of a grand jury investigation demanding the books and records of the party. Corretjer refused to produce them upon the ground that they would tend to incriminate him. He was adjudged in contempt by the District Court for his failure to produce them. The Circuit Court of Appeals affirmed that judgment because of his failure to produce the books and records. The language of the court may be construed as

indicative of their belief that the privilege could be asserted with respect to records of the association if the petitioner had produced them for inspection.

> "While it is very doubtful whether the situation is the same as in case of an officer of a corporation, who is directed to produce the corporation books and papers as in Wilson v. U. S., 221 U. S. 361, 31 S. Ct. 538, 55 L. Ed. 771, Ann. Case, 1912 D. 558, since a political party in Puerto Rico is not a corporate body, it has been defined as an association of voters believing in certain principles of government and formed to urge the adoption of those principles. 49 Cyc., pages 1074, 1075. It is also questioned whether the subpoena duces tecum was directed to the petitioner as an official of the Nationalist Party, or as an individual; yet he should have produced the papers in his possession as directed and on refusing to deliver them to the grand jury should have appealed to the court and invoked his privilege under the fifth amendment and submitted the documents to the Court for its determination as to whether they were incriminating" (88 F. (2d) 116, 118).

The failure of the party claiming the privilege in both the Brown and Corretjer cases to produce the records for inspection warranted the affirmance of the judgments of conviction. This failure was not present in the case at bar. Respondent had the records in court with him. The position which the district judge took obviated the necessity of examining the record (R. 8-10). The decision of the Circuit Court remanding the case to the district court to take proof as to respondent's membership in the union and to determine whether the records would incriminate him as an individual was accordingly correct.

The Government has cited cases which it states constitute authority in support of its position upon the question presented. (Govt's. brief, p. 22, 23 and 24).[20] It is the con-

[20] U. S. v. Greater N. Y. L. P. Chamber of Commerce, 34 F. (2d) 967 (S. D. N. Y. 1929), aff'd as to other matters 47 Fed. (2d) 156 (CCA 2, 1931); certiorari denied 283 U. S. 837; U. S. v. B. Goedde & Co., 40 F. Supp. 523, 534 (E. D. Ill. 1941); In re Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, 33 F. Supp. 544 (N. D. Cal. 1940); U. S. v. Lumber Products Assn., 42 F. Supp. 910, 916 (N. D. Cal. 1942).

tention of the respondent that these decisions are unsound in so far as they deny to a member of an unincorporated association the right to refuse to produce its books upon the ground that they tend to incriminate him.

An important ground of distinction exists, however, between the cases cited by the government, and the case at bar. Each of the cases cited by the government involve the indictment of a labor union for violation of the Anti-trust Act. As has been heretofore pointed out, associations have been defined in the Act as "persons" within its provisions. Therefore, the unions were capable of indictment as well as the individual officers and members. The grand jury which sought the books and records of Local Union 542, in the case at bar, was not investigating a possible violation of the Anti-trust Act by the union. It was solely interested in ascertaining whether or not there had been a violation of the Anti-Kickback Statute,[21] because of the operation of a work-permit system. An examination of the contents of the subpoena duces tecum discloses that all the records sought by the grand jury pertain to the operation of such a system (R. 4, 5). The grand jury affirmatively indicated that it was not interested in an indictment of the union as a separate entity (R. 3). Respondent maintains that the union could not have been indicted for a violation of the Anti-Kickback Act. The word "whoever" as found in 40 U. S. C. A. 276 (b) is not otherwise defined in the statute. Giving it the common dictionary meaning, the word would include "any person."[22] But as has already been pointed out, an unincorporated association is not a "person" within the definition found in the General Construction Law. 1 U. S. C. A. 1. It is noteworthy that whenever Congress desired to make a statute applicable to unincorporated associations, it explicitly mentions them in the statute as within the class of persons to whom the law

[21] See footnote 1, supra.

[22] Funk & Wagnalls "New Standard Dictionary" (1937), p. 2709; Webster's "New International Dictionary" (2d Ed., 1936), p. 2921.

applies.[23] A striking example of this is found in the very title and chapter of the United States Code containing the Anti-Kickback Act. Title 40, Sections 270(a), 270(b) and 270(c) of the United States Code use the term "any person" in stating to whom the sections are applicable. Title 40, Section 270(d) then proceeds to define the term "any person" as found in the foregoing sections. It provides "The term 'person' and the masculine pronoun as used in Sections 270(a), 270(b) and 270(c) of this title shall include all persons, whether individuals, associations, copartnerships, or corporations." The provisions of Title 40, Sections 270(a), 270(b) and 270(c) are not penal. Title 40, Section 270(a) provides for the furnishing of a bond to the United States by any person engaged as a contractor on a public work. Title 40, Section 270(b) provides for the rights of persons furnishing labor or material for public works to obtain payment. Section 270(c) provides for the right of a person who has furnished labor and material on a public work to obtain a certified copy of his bond. Certainly if Congress has seen fit to define the term "any person" as used in certain sections of Title 40 of the United States Code which are not even penal in nature, its failure to do so with respect to the penal provisions found in Section 276(b) of that title cannot be considered other than as an indication that the provisions shall not apply to associations. It is clear that in the absence of unequivocal legislative intent associations do not commit crimes. C. J. S. Associations, Sec. 17, page 43. Respondent knows of no case in which an unincorporated association has ever been indicted for a violation of 40 U. S. C. A. 276(b). During the course of the investigation for which the grand jury demanded the books of the respondent's union, three indictments for violation of the Anti-Kickback Act were returned against individual members of the union who had acted as shop stewards at the Me-

[23] See footnote 15, supra.

chanicsburg Naval Depot.[24] The union was not indicted. Four officials of a union in Albany were indicted in 1943 for violating the Act. The union was not indicted. *U. S. v. McGraw, et al.*, 47 F. Supp. 927 (N. D. N. Y.). Union officials were indicted in Syracuse, New York, for a violation of the Act, but the union itself was not made a defendant. *U. S. v. Fuller, et al.* (N. D. N. Y.).[25] Officials of a union were indicted in Boston, Mass., for a violation of the Act. The union was not made a defendant. *U. S. v. Carbone, et al.* (D. C. Mass.):[26]

The argument of the Government that the privilege against self-incrimination may not be claimed by the respondent because the books and records were the property of a separate entity, the union, certainly cannot be sustained in a case where the union is not considered an entity within the provisions of the statute allegedly violated by the respondent. Such a situation is present in the case at bar. The cases cited by the Government involving indictments of unions under the Anti-trust Act are therefore readily distinguishable.

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the court below was correct in remanding the case to the district court with directions to determine whether respondent was a member of the union, and if he was, to examine the books, and sustain the privilege if they tended to incriminate him as an individual.

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[24] U. S. v. Baker; U. S. v. Burkett; U. S. v. Sweeney (M. D. Pa.), pending. Indict. No. 10891, 10982, 10893.

[25] Unreported officially, but decision overruling demurrer decided Sept. 7, 1943 is copied in 6 Wage Hour Rep't. 1090.

[26] U. S. v. Carbone, et al., Indict. No. 16016, motion for reargument of demurrer pending.

The judgment of the court below should therefore be affirmed.

Respectfully submitted,

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February, 1944.

SUPREME COURT OF THE UNITED STATES.

No. 366.—October Term, 1943.

United States of America, Petitioner, vs. Jasper White.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[June 12, 1944.]

Mr. Justice Murphy delivered the opinion of the Court.

During the course of a grand jury investigation into alleged irregularities in the construction of the Mechanicsburg Naval Supply Depot, the District Court of the United States for the Middle District of Pennsylvania issued a subpoena duces tecum directed to "Local No. 542, International Union of Operating Engineers." This subpoena required the union to produce before the grand jury on January 11, 1943, copies of its constitution and by-laws and specifically enumerated union records showing its collections of work-permit fees, including the amounts paid therefor and the identity of the payors from January 1, 1942, to the date of the issuance of the subpoena, December 28, 1942.

The United States marshal served the subpoena on the president of the union. On January 11, 1943, respondent appeared before the grand jury, describing himself as "assistant supervisor" of the union. Although he was not shown to be the authorized custodian of the union's books, he had the demanded documents in his possession. He had not been subpoenaed personally to testify nor personally directed by the subpoena duces tecum to produce the union's records. Moreover, there was no effort or indicated intention to examine him personally as a witness. Nevertheless he declined to produce the demanded documents "upon the ground that they might tend to incriminate Local Union 542, International Union of Operating Engineers, myself as an officer thereof, or individually." He reiterated his refusal after consulting counsel.

He was immediately cited for contempt of court and during the hearing on the contempt repeated his refusal once again. He

based his refusal on the opinion of his counsel that "great uncertainty exists today as to what may or may not constituate a violation of Section 276(b), Title 40, of the United States Code."[1] He made no effort, although he apparently was willing, to tender the records for the judge's inspection in support of his assertion that their contents would tend to incriminate him or the union. The District Court held his refusal inexcusable, adjudged him guilty of contempt of court and sentenced him to thirty days in prison.

The court below reversed the District Court's judgment by a divided vote. 137 F. 2d 24. The majority held that the records of an unincorporated labor union were the property of all its members and that, if respondent were a union member and if the books and records would have tended to incriminate him, he properly could refuse to produce them before the grand jury. The court below accordingly remanded the case to the District Court with directions to sustain the claim of privilege if after further inquiry it should determine that respondent was in fact a member of the union and that the documents would tend to incriminate him as an individual. We granted certiorari, 320 U. S. 729, because of the novel and important question of constitutional law which is presented.[2]

The only issue in this case relates to the nature and scope of the constitutional privilege against self-incrimination. We are not concerned here with a complete delineation of the legal status of unincorporated labor unions. We express no opinion as to the legality or desirability of incorporating such unions or as to the

[1] This was a reference to the so-called "Kickback" Act, which was before us in United States v. Laudani, 320 U. S. 543. Section 1 of the Act provides that whoever shall induce any person employed in the construction, prosecution or completion of any public building or work financed in whole or in part by the United States, or in the repair thereof, to give up part of his compensation by force, intimidation, threat or procuring dismissal from employment, or by any other manner whatsoever shall be fined not more than $5,000, or imprisoned not more than five years, or both. Act of June 13, 1934, c. 482, 48 Stat. 948, 40 U. S. C. § 276(b).

[2] In its petition for a writ of certiorari in this case, the Government claimed that respondent had taken his appeal to the Circuit Court of Appeals by filing a notice of appeal pursuant to the Criminal Appeals Rules rather than by application for appeal as required by Section 8(c) of the Act of February 13, 1925, c. 229, 43 Stat. 940, 28 U. S. C. § 230. See Nye v. United States, 313 U. S. 33, 43-44. It appears, however, that at the contempt hearing an extensive colloquy took place between the district judge and counsel with respect to the perfecting of the appeal and respondent at that time made in effect an oral application for appeal which was allowed by the court within the meaning of the Act of February 13, 1925.

necessity of considering them as separate entities apart from their members for purposes other than the one posed by the narrow issue in this case. Nor do we question the obvious fact that business corporations, by virtue of their creation by the state and because of the nature and purpose of their activities, differ in many significant respects from unions, religious bodies, trade associations, social clubs and other types of organizations, and accordingly owe different obligations to the federal and state governments. Our attention is directed solely to the right of an officer of a union to claim the privilege against self-incrimination under the circumstances here presented.

Respondent contends that an officer of an unincorporated labor union possesses a constitutional right to refuse to produce, in compliance with a subpoena duces tecum, records of the union which are in his custody and which might tend to incriminate him. He relies upon the "unreasonable search and seizure" clause of the Fourth Amendment and the explicit guarantee of the Fifth Amendment that no person shall be compelled in any criminal case to be a witness against himself. We hold, however, that neither the Fourth nor the Fifth Amendment, both of which are directed primarily to the protection of individual and personal rights, requires the recognition of a privilege against self-incrimination under the circumstances of this case.

The constitutional privilege against self-incrimination is essentially a personal one, applying only to natural individuals. It grows out of the high sentiment and regard of our jurisprudence for conducting criminal trials and investigatory proceedings upon a plane of dignity, humanity and impartiality. It is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him. Physical torture and other less violent but equally reprehensible modes of compelling the production of incriminating evidence are thereby avoided. The prosecutors are forced to search for independent evidence instead of relying upon proof extracted from individuals by force of law. The immediate and potential evils of compulsory self-disclosure transcend any difficulties that the exercise of the privilege may impose on society in the detection and prosecution of crime. While the privilege is subject to abuse and misuse, it is firmly embedded in

our constitutional and legal frameworks as a bulwark against iniquitous methods of prosecution. It protects the individual from any disclosure, in the form of oral testimony, documents or chattels, sought by legal process against him as a witness.

Since the privilege against self-incrimination is a purely personal one, it cannot be utilized by or on behalf of any organization, such as a corporation. *Hale* v. *Henkel*, 201 U. S. 43; *Wilson* v. *United States*, 221 U. S. 361; *Essgee Co.* v. *United States*, 262 U. S. 151. See also *United States* v. *Invader Oil Corp.*, 5 F. 2d 715. Moreover, the papers and effects which the privilege protects must be the private property of the person claiming the privilege, or at least in his possession in a purely personal capacity. *Boyd* v. *United States*, 116 U. S. 616. But individuals, when acting as representatives of a collective group, cannot be said to be exercising their personal rights and duties nor to be entitled to their purely personal privileges. Rather they assume the rights, duties and privileges of the artificial entity or association of which they are agents or officers and they are bound by its obligations. In their official capacity, therefore, they have no privilege against self-incrimination. And the official records and documents of the organization that are held by them in a representative rather than in a personal capacity cannot be the subject of the personal privilege against self-incrimination, even though production of the papers might tend to incriminate them personally. *Wilson* v. *United States*, *supra*; *Dreier* v. *United States*, 221 U. S. 394; *Baltimore & Ohio R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Wheeler* v. *United States*, 226 U. S. 478; *Grant* v. *United States*, 227 U. S. 74; *Essgee Co.* v. *United States*, *supra*. Such records and papers are not the private records of the individual members or officers of the organization. Usually, if not always, they are open to inspection by the members and this right may be enforced on appropriate occasions by available legal procedures. See *Guthrie* v. *Harkness*, 199 U. S. 148, 153. They therefore embody no element of personal privacy and carry with them no claim of personal privilege.

The reason underlying the restriction of this constitutional privilege to natural individuals acting in their own private capacity is clear. The scope and nature of the economic activities of incorporated and unincorporated organizations and their representatives demand that the constitutional power of the federal and

state governments to regulate those activities be correspondingly effective. The greater portion of evidence of wrongdoing by an organization or its representatives is usually to be found in the official records and documents of that organization. Were the cloak of the privilege to be thrown around these impersonal records and documents, effective enforcement of many federal and state laws would be impossible. See *Hale* v. *Henkel*, *supra*, 70, 74; 8 Wigmore on Evidence (3rd ed.) § 2259a. The framers of the constitutional guarantee against compulsory self-disclosure, who were interested primarily in protecting individual civil liberties, cannot be said to have intended the privilege to be available to protect economic or other interests of such organizations so as to nullify appropriate governmental regulations.

The fact that the state charters corporations and has visitorial powers over them provides a convenient vehicle for justification of governmental investigation of corporate books and records. *Hale* v. *Henkel*, *supra*; *Wilson* v. *United States*, *supra*. But the absence of that fact as to a particular type of organization does not lessen the public necessity for making reasonable regulations of its activities effective, nor does it confer upon such an organization the purely personal privilege against self-incrimination. Basically, the power to compel the production of the records of any organization, whether it be incorporated or not, arises out of the inherent and necessary power of the federal and state governments to enforce their laws, with the privilege against self-incrimination being limited to its historic function of protecting only the natural individual from compulsory incrimination through his own testimony or personal records.

It follows that labor unions, as well as their officers and agents acting in their official capacity, cannot invoke this personal privilege. This conclusion is not reached by any mechanical comparison of unions with corporations or with other entities nor by any determination of whether unions technically may be regarded as legal personalities for any or all purposes. The test, rather, is whether one can fairly say under all the circumstances that a particular type of organization has a character so impersonal in the scope of its membership and activities that it cannot be said to embody or represent the purely private or personal interests of its constituents, but rather to embody their common or group interests only. If so, the privilege cannot be invoked on behalf

of the organization or its representatives in their official capacity. Labor unions—national or local, incorporated or unincorporated—clearly meet that test.

Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity. This difference is as well defined as that existing between individual members of the union. The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent upon the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members.[3] Duly elected union officers have no authority to do or sanction anything other than that which the union may lawfully do; nor have they authority to act for the members in matters affecting only the individual rights of such members. The union owns separate real and personal property, even though the title may nominally be in the names of its members or trustees.[4] The official union books and records are distinct from the personal books and records of the individuals, in the same manner as the union treasury exists apart from the private and personal funds of the members. See *United States* v. *B. Goedde & Co.*, 40 F. Supp. 523, 534. And no member or officer has the right to use them for criminal purposes or for his purely private affairs. The actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question. At the same time, the members are not subject to either criminal or civil

[3] In United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344, 385, this Court described the union there involved in the following terms: "The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obligations assumed in traveling expenses, holding of conventions, and general overhead cost, but most of all in strikes, are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, and in every way the union acts as a business entity, distinct from its members. No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies."

[4] Lloyd, The Law Relating to Unincorporated Associations (1938) 165 ff.; Wrightington, The Law of Unincorporated Associations (2d ed. 1923) 336 ff.

liability for the acts of the union or its officers as such unless it is shown that they personally authorized or participated in the particular acts. See *Lawlor v. Loewe*, 235 U. S. 522; *Eagle Glass & Mfg. Co.* v. *Rowe*, 245 U. S. 275.

Moreover, this Court in *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344, held that labor unions might be made parties defendant in suits for damages under the Sherman Act by service of process on their officers.

Both common law rules and legislative enactments have granted many substantive rights to labor unions as separate functioning institutions. In *United Mine Workers of America* v. *Coronado Coal Co., supra*, 385-386, this Court pointed out that "the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. Their right to maintain strikes, when they do not violate law or the rights of others, has been declared. The embezzlement of funds by their officers has been especially denounced as a crime. The so-called union label, which is a quasi trademark to indicate the origin of manufactured product in union labor, has been protected against pirating and deceptive use by the statutes of most of the states, and in many states authority to sue to enjoin its use has been conferred on unions. They have been given distinct and separate representation and the right to appear to represent union interests in statutory arbitrations, and before official labor boards." Even greater substantive rights have been granted labor unions by federal and state legislation subsequent to the statutes enumerated in the opinion in that case.[5]

These various considerations compel the conclusion that respondent could not claim the personal privilege against self-incrimination under these circumstances. The subpoena duces tecum

[5] Outstanding examples of federal legislation enacted subsequent to the *Coronado* case giving recognition to union personality are the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. § 151, the Railway Labor Act, 44 Stat. 577, 45 U. S. C. § 151, and the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. § 101. The Anti-Racketeering Act, 48 Stat. 979, 18 U. S. C. § 420a, *e*, excepts certain types of activity by labor unions, thereby recognizing them as entities capable of violating the Act. The War Labor Disputes Act, 57 Stat. 163, 50 U. S. C. App. § 1501, evidences a similar recognition. See, in general, 1 & 2 Teller, Labor Disputes and Collective Bargaining (1940), Part V. For references to and discussions of recent state labor legislation, see *id.*, Part VI; Smith and DeLancey, "The State Legislatures and Unionism;" 38 Michigan Law Rev. 987.

was directed to the union and demanded the production only of its official documents and records. Respondent could not claim the privilege on behalf of the union because the union did not itself possess such a privilege. Moreover, the privilege is personal to the individual called as a witness, making it impossible for him to set up the privilege of a third person as an excuse for a refusal to answer or to produce documents. Hence respondent could not rely upon any possible privilege that the union might have. *Hale* v. *Henkel, supra,* 69-70; *McAlister* v. *Henkel,* 201 U. S. 90. Nor could respondent claim the privilege on behalf of himself as an officer of the union or as an individual. The documents he sought to place under the protective shield of the privilege were official union documents held by him in his capacity as a representative of the union. No valid claim was made that any part of them constituted his own private papers. He thus could not object that the union's books and records might incriminate him as an officer or as an individual.

It is unnecessary to determine whether or not respondent was a member of the union in question, for in either event he could not invoke the privilege against self-incrimination under these facts. It is likewise immaterial whether the union was subject to the provisions of the statute in relation to which the grand jury was making its investigation. The exclusion of the union from the benefits of the purely personal privilege does not depend upon the nature of the particular investigation or proceeding. The union does not acquire the privilege by reason of the fact that it is not charged with a crime or that it may not be subject to liability under the statute in question. The union and its officers acting in their official capacity lack the privilege at all times of insulating the union's books and records against reasonable demands of governmental authorities.

The judgment of the court below must be reversed and that of the District Court affirmed.

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER and Mr. Justice JACKSON concur in the result.